

ends. In the meantime, however, RAM twists slowly in the wind, while Capitol continues to "bash" PCP service, and harass RAM's customers, unfettered by NABER or the FCC. Swift action to redress these wrongs seems eminently appropriate under the circumstances.

V. Burden of Proof in These Proceedings.

Capitol's recent letter to the Commission suggests that it has no intention of responding to RAM's allegations of fact, unless ordered to do so by the FCC. A discussion of burden of proof is thus in order, since the FCC may have no choice but to designate these issues for a hearing to determine if Capitol has the requisite character qualifications to be a Commission licensee, and to determine if Capitol's PCP application should be denied.

RAM's pleadings establish a prima facie case against Capitol, based on sworn Declarations and other documentary evidence, as follows: (1) intent to cause harmful interference to FCC licensed operations; (2) willful and/or reckless misrepresentations of the FCC's rules; (3) willful and/or reckless misrepresentations of fact concerning RAM's PCP operations; and, (4) failure to establish good faith intent to provide PCP service.

The "operative facts" with respect to these issues are "peculiarly within the knowledge" of Capitol's officers and employees. See TeleSTAR, 64 RR 2d 1444, 1447 (1988). Thus,

Capitol properly bears both the burden of proceeding with the evidence, and the burden of proof with respect to these issues.
Id.

CONCLUSION

For all the foregoing reasons, and for reasons set forth in RAM's Petition to Deny, RAM respectfully requests that the Commission investigate Capitol's continuing course of conduct, order Capitol to cease and desist from making false and malicious statements to RAM's customers concerning FCC licensed radio operations, and conduct further investigations to determine if additional sanctions are appropriate for Capitol's apparent violations of the Communications Act and the Commission's Rules.

Respectfully submitted,

RAM Technologies, Inc.

By: 

Frederick M. Joyce
Its Counsel

JOYCE & JACOBS
2300 M Street, N.W.
Eighth Floor
Washington, D.C. 20037

(202) 457-0100

Date: April 13, 1990

000009

I, Bruce Kelleck, being of at least 21 years of age and a citizen of the United States, do hereby declare under penalty of perjury as follows:

When advised by Capitol Paging that Len Rogers, President, Mutual Wholesalers, had cancelled service with RAM-PAGE, I contacted Mr. Rogers for his comments.

Mr. Rogers stated Capitol Paging had advised him that he was using a "party line" frequency which would cause him to miss his pages due to the frequency busying out. He further produced a photocopy of the following documents which were faxed to him by Mike Raymond of Capitol Paging.

- * A copy of the FCC Part 90 rules with paragraphs underscored that not properly explained to the customer would be misleading as well as damaging to a PCP licensee. He explained to our customer that this section of the rules meant that we could only transmit for three minutes and then we must not transmit for three minutes and that this would delay his pages.
- * Copies of traffic charts and graphs recently filed by RAM-PAGE with NABER, interpreting this list to be proof positive that the frequency 152.480 was full and that this would cause their pages to be delayed.
- * A list of companies licensed on or filing for use of 152.480 sent to Capitol by NABER. Mr. Raymond pointed to this list and inferred that the frequency 152.480 was much like a "party line" and that co-channel interference was likely to delay their pages or cause them not to be received at all.

Mr. Raymond used both the Part 90 rules, our documents filed with NABER, and a list of companies filing for the frequency to mislead Mr. Rogers with scare tactics and malign not only RAM-PAGE, but PCP companies in general.

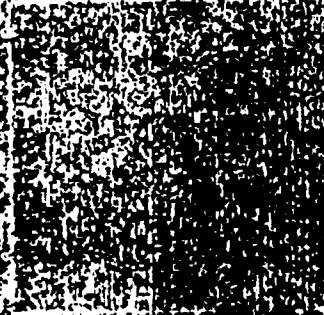
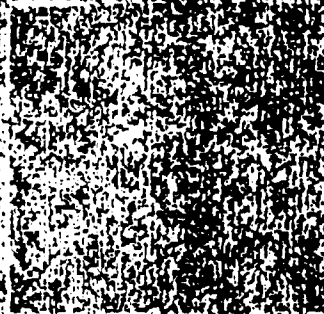
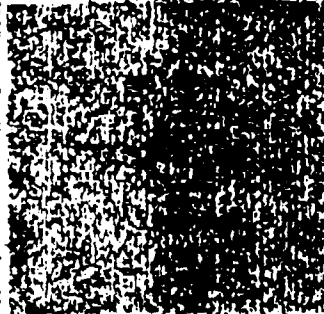
Executed: Bruce Kelleck By: 2/5/90

Notary Public: Ann E. Hurter

My Commission expires: 6/22/93

FCC RULES & REGULATIONS: PART 90

*Private Land
Mobile Radio Services*



(c) To turn the carrier of the transmitter on and off as will, or to close the system down completely, when circumstances warrant such action.

(d) Where the licensee's transmitting facilities may be operated from dispatch points, the fixed control point shall have equipment to permit the control operator to either disconnect the dispatch point circuit from the transmitter(s) or to render the transmitter(s) inoperative from any dispatch point being supervised.

(e) Where the system is interconnected with public communication facilities, as provided in §§90.477 through 90.483, and where those rules so require, the fixed control point shall be equipped to permit the control operator:

(1) To monitor co-channel facilities of other licensees sharing an assigned channel or channels with the licensee in the licensee's area of operation; and

(2) To terminate any transmission(s) or communication(s) between points in the public communication system and points in the private communication system.

(f) In urban areas, the location of fixed transmitter control points will be specified, "same as transmitter," unless the control point is at a street address which is different from that of the transmitter(s) controlled. In rural areas, the location of fixed control points will be specified, "same as transmitter," unless the control point is more than 500 feet from the transmitter(s) controlled. In the latter case, the approximate location of the control point will be specified in distance and direction from the transmitter(s) controlled in terms of feet and geographical quadrant, respectively. It would be assumed that the location of a fixed control point is the same as the location of the transmitter(s) controlled, unless the applicant includes a request for a different location described in appropriate terms as indicated herein.

(g) [Reserved]

(h) Mobile transmitters shall be assumed to be under the immediate control of the mobile operator, provided, however, overall supervision and control of the operation and use of a communication system may be the responsibility of a fixed control point operator. In general, mobile transmitters shall be equipped to permit the operator to determine when they are radiating RF energy or when the transmitter circuits have been placed in a condition to produce such radiation. This may be accomplished either through the use of a carrier operated device or of a pilot lamp or meter which will provide a visual indication when the transmitter is radiating or has been placed in a condition to produce radiation, provided, however, that hand-carried or pack-carried transmitters and transmitters installed on motorcycles need not be so equipped.

§90.465 Control of systems of communication.

(a) Depending on design considerations control of a system of communication may be exercised in varying ways. In SF simplex, base/mobile operations, control may be exercised by the control operator at the fixed control point. In mobile relay systems, where there is an associated control point or control station, control may be exercised by the operator at the control point or control station. In mobile-only systems, control may be exercised by the mobile operators. In communication systems involving multiple base stations or fixed relays control of the system may result from a combination of factors and considerations, including control by a fixed control point operator at some point within the system of communication or control by the mobile station operator of the licensee.

(b) In internal systems, as defined in §90.7, control may be maintained by conforming the system to the requirements of §§90.471 through 90.475.

(c) In interconnected systems, as defined in §90.7, control may be maintained by conforming operation and system design to that permitted in §§90.477 through 90.483.

§90.467 Dispatch points. - Dispatch points meeting the requirements of this section need not be specifically authorized

provided, however, that the licensee of any radio station operated from a dispatch point or points shall assume full responsibility for the use and operation of the authorized facilities in compliance with all applicable provisions of law or rule and shall comply with the policy:

(a) A dispatch point may be linked to the transmitter(s) being operated by private or leased facilities of fixed radio circuits, provided the requirements of §90.463 are met.

(b) No telephone position in the public, switched, telephone network will be treated as a dispatch point within the meaning of intent of this section.

(c) Operation of transmitting facilities from dispatch points is permitted only when the control operator at a fixed control point in the system is on duty and no other laws.

Internal Transmitter Control Systems

§90.469 Unattended operation. - (a) Subject to the provisions of §§90.243, 90.245, and 90.247, mobile relay, fixed relay, and mobile repeater stations are authorized for unattended operation, and the transmitter control point requirements set out in §§90.463 through 90.465 shall not apply.

(b) Self-activated transmitters may be authorized for unattended operation, where they are actuated by either electrical or mechanical devices, provided the licensee adopts reasonable means to guard against malfunctions and harmful interference to other users.

§90.471 Points of operation in internal transmitter control systems. - The transmitting facilities of the licensee may be operated from fixed positions located on premises controlled by the licensee. The fixed positions may be part of a private telephone exchange or it may be any portion of a closed or limited access communications facility intended to be used by employees of the licensee for internal communications and transmitter control purposes. Operating positions in internal transmitter control systems are not synonymous with dispatch points (see §90.467), nor with telephone positions which are part of the public, switched telephone network, and the scheme of regulation is to be considered and treated as being different. See §§90.485 through 90.489.

§90.473 Operation of internal transmitter control systems through licensed fixed control points. - An internal transmitter control system may be operated under the control and supervision of a control operator stationed at a fixed control point in the system. In such a case, the control point must be equipped to permit the control operator to monitor all traffic to and from fixed positions and mobile stations or paging units of the licensee, and the system shall be so designed to permit the control operator to either disconnect any operating position in the internal system from the transmitter control circuit or to close the system down entirely at will.

§90.475 Operation of internal transmitter control systems in specially equipped systems. - (a) As internal transmitter control systems need not be designed to meet the requirements of §90.473. As an alternative, the licensee may meet the following requirements:

(1) All operating positions must be located on premises controlled by the licensee.

(2) An internal transmitter control system may be used in conjunction with other approved methods of transmitter control and interconnection so long as the internal transmitter control system, itself, is neither accessed from telephone positions in the public switched telephone network, nor used dial-up circuits in the public switched telephone network. Licensees with complex communications systems involving fixed systems whose base stations are controlled by such systems may automatically access these base stations through the microwave or operational fixed systems from positions in the PSTN, so long as the base stations and mobile units meet the requirements of §90.483, and if a separate circuit is provided for each mode of transmitter operation (i.e., conventional, dial-up or internal).

FCC RULES AND REGULATIONS, PART 90

§90.477

(3) The system must be designed so that upon completion of a transmission, the base station transmitter(s) will close down automatically within 3 seconds.

(4) To guard against malfunctions, the system must be designed so that the base station(s) will be deactivated by an automatic timing device when a modulated signal is not transmitted for a period of three (3) consecutive minutes.

(5) The system must include automatic monitoring equipment, installed at the base station transmitter site(s), which will prevent the activation of the system when signals of other co-channel stations are present.

Interconnected Systems

§90.475 Interconnection of fixed stations and certain mobile stations. - (a) Fixed stations and mobile stations used to provide the functions of fixed stations pursuant to the provisions of paragraphs (c)(4) and (c)(36) of §90.75 and §90.267 are not subject to the interconnection provisions of §90.477 and §90.483 and may be interconnected with the facilities of common carriers.

(b) Mobile stations used to provide the functions of base and mobile relay stations pursuant to the provisions of paragraphs (c)(4) and (c)(36) of §90.75 and §90.267 are not subject to the provisions of paragraph (d)(3) of §90.477 and may be interconnected with the facilities of common carriers subject to the provisions of paragraphs (d)(1), (d)(2) and (e) of §90.477 and §90.483.

§90.477 Interconnected systems. - (a) Applicants for new land stations to be interconnected with the public switched telephone network must indicate on their applications (class of station code) that their stations will be interconnected. Licensees of land stations that are not interconnected may interconnect their stations with the public switched telephone network only after modifying their license. See §90.135. In all cases a detailed description of how interconnection is accomplished must be maintained by licensees as part of their station records. See §90.443.

(b) In the frequency ranges 806-824 MHz, 851-849 MHz, 896-901 MHz and 935-940 MHz, interconnection with the public switched telephone network is authorized under the following conditions:

(1) Interconnected operation is on a secondary basis to dispatch operation. This restriction will not apply to trunked systems or on any channel assigned exclusively to one licensee.

(2) Interconnection may be accomplished at any location through a separate or shared interconnection device. When land stations subject to this part are multiple licensed or shared by authorized users, arrangements for telephone service must be made with a duly authorized carrier by users, licensees, or their authorized agents on a non-profit cost-sharing basis. When telephone service costs are shared, at least one licensee participating in the cost sharing arrangement must maintain cost sharing records and the costs must be distributed at least once a year. Licensees, users, or their authorized agents may also make joint use arrangements with a duly authorized carrier and arrange that each licensee or user pay the carrier directly for the licensee's or user's share of the joint use of the shared telephone service. A report of the cost distribution must be placed in the licensee's station records and made available to participants in the sharing and the Commission upon request. In all cases, arrangements with the duly authorized carrier must disclose the number of licensees and users and the nature of the use.

(c) Interconnection of facilities in the Radiolocation Service (Subpart F) will not be permitted.

(d) In the frequency ranges below 800 MHz, interconnection with the public switched telephone network is authorized under the following conditions:

(1) Interconnected operation is on a secondary basis to dispatch operation. This restriction will not apply to trunked

(2) Interconnection may be accomplished at any location through a separate or shared interconnection device. When land stations subject to this part are multiple licensed or shared by authorized users, arrangements for telephone service must be made with a duly authorized carrier by users, licensees, or their authorized agents on a non-profit cost sharing basis. When telephone service costs are shared, at least one licensee participating in the cost sharing arrangement must maintain cost sharing records and the costs must be distributed at least once a year. Licensees, users, or their authorized agents may also make joint use arrangements with a duly authorized carrier and arrange that each licensee or user pay the carrier directly for the licensee's or user's share of the joint use of the shared telephone service. A report of the cost distribution must be placed in the licensee's station records and made available to participants in the sharing and the Commission upon request. In all cases, arrangements with the duly authorized carrier must disclose the number of licensees and users and the nature of the use.

(3) In the Special Emergency Radio Service (Subpart G of this part), except for medical emergency systems in the 450-470 MHz band, the Business and Special Industrial Radio Services (Subpart D of this part), and the Automobile Emergency and Taxis Radio Services (Subpart B of this part), interconnection will be permitted only where the base station site or sites of proposed stations are located 75 miles or more from the designated centers of the urbanized areas listed below. If licensees seek to interconnect in these five services within 75 miles of the 25 cities they must obtain the consent of all co-channel licensees located both (1) within 75 miles of the center of the city; and (2) within 75 miles of the interconnected base station transmitter. The consensual agreement among the co-channel licensees must specifically state the terms agreed upon and a statement must be submitted to the Commission indicating that all co-channel licensees have consented to the use of interconnection. If a licensee has agreed to the use of interconnection on the channel, but later decides against the use of interconnection, the licensee may request that the co-channel licensees reconsider the use of interconnection. If the licensee is unable to reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it to another channel. If a new licensee is assigned to a frequency where all the co-channel licensees have agreed to the use of interconnection and the new licensee does not agree, the new licensee may request that the co-channel licensees reconsider the use of interconnection. If the new licensee cannot reach an agreement with co-channel licensees it may request that the Commission reassign it to another channel.

Urbanized Area	North Latitude	West Longitude
New York, NY - Northeastern NJ	40°45'N	74°00'W
Los Angeles - Long Beach, CA	34°03'N	118°14'W
Chicago, IL	41°52'N	87°45'W
Philadelphia, PA - NJ	39°58'N	75°09'W
Detroit, MI	42°21'N	83°04'W
San Francisco - Oakland, CA	37°45'N	122°29'W
Boston, MA	42°21'N	71°03'W
Washington, DC - MD - VA	38°53'N	77°02'W
Cleveland, OH	41°29'N	81°41'W
St. Louis, MO - IL	38°45'N	90°18'W
Phoenix, AZ	33°27'N	112°04'W
Minneapolis - St. Paul, MN	44°55'N	93°10'W
Houston, TX	29°43'N	95°27'W
Baltimore, MD	39°17'N	76°36'W
Orlando, FL	28°27'N	81°27'W
Memphis, TN	35°05'N	89°45'W
Seattle - Tacoma, WA	47°33'N	122°20'W
Miami, FL	25°45'N	80°11'W
San Diego, CA	32°43'N	117°07'W
Atlanta, GA	33°45'N	84°23'W
Cincinnati, OH - IN	39°09'N	84°39'W
Kansas City, MO - KS	39°05'N	94°39'W
Buffalo, NY	42°52'N	78°08'W
Columbus, OH	39°58'N	82°58'W
San Jose, CA	37°20'N	121°52'W

(e) Additional frequencies shall not be assigned to enable any licensee to employ a preferred interconnection capability.

(f) Paging systems operating on frequencies in the bands below 800 MHz are not subject to the interconnection provisions

000013

US AIR FORCE
CAPITAL BUILDING
ATTN: MR. BOSTON
1420 KANSAS AVE SW
WASHINGTON, DC 20301

Frequency: 115.2 MHz
Power: 200 W
Ant: 115.2 MHz
Lat: 38.91 N
Long: 77.04 W
Date: 2/22/90
Radio: SAC 18

THIS APPLICATION WILL BE FILED WITH THE FCC WITHIN 3 WORKING DAYS

FREQUENCY CLASS	UNIT	EMITTER	POWER	ERP	ANT	ELEV	ANT	LATITUDE	LONGITUDE	OPERATION	NAME
152.4000 FM	1	200	200	200	115.2	38.91	77.04	38.91	77.04	WASHINGTON	CARROLL
152.4000 FM	1	200	200	200	115.2	38.91	77.04	38.91	77.04	WASHINGTON	CARROLL

Application requested and modified frequency, to use 115.2 MHz, is enclosed. Please strongly advise all pending licenses to be filed with the FCC in order to co-exist on this shared frequency. Please refer to the FCC's 47 CFR 1.1307 and 1.1308 for more information. Please refer to the FCC's 47 CFR 1.1307 and 1.1308 for more information.

OR AREA OF OPERATION

WASHINGTON & MONTGOMERY
2120 L ST NW
WASHINGTON DC 20037

APPLICANT COPY
QUESTIONS?
CALL 1-800-758-0300

000014

N A B E R

Page:

CO-CHANNEL USER LISTING

Frequency - 152.48000

Latitude - 38:22:36

Longitude - 81:42:09

Radius - 50.00 MI

Requested By - CAPITOL PAGING

Coord - GAND2

Control Number - 8935206

Part 90.173 of the FCC's rules and regulations states that unless specifically provided for in the rules, frequencies are allocated on a SHARED basis only and will NOT be assigned for the exclusive use of any licensee. This listing contains licensees and approved NABER coordinations and is for informational purposes only. It is based on NABER's data base which is based, in part, on information made available from the FCC. These records may contain errors, omissions or inaccuracies. NABER will not be responsible for any loss or damage you sustain which is caused by omissions, errors or inaccuracies in the FCC's data base or in the NABER data base.

NTROL #	UNITS	CLASS	NAME	LATITUDE	LONGITUDE	M	ANT	ELEV	ERP	DIS	CALL	STGN	TRANS	CITY
0760051	1	FBSC	T & T COMMUNICATIONS	37:47:07	81:31:11		100	3520	1409	42			BECKLEY	
5034133	1	FB	RAM COMMUNICATIONS INC	37:47:09	81:31:14		80	3520	660	42	WNCV732		BECKLEY	
0300127	1	FBSC	RAM-PAGE	37:47:10	81:31:08	N	120	3530	1400	42			KUPPERSTON	
3260151	1	FBSC	COMMUNICATION SERVICE INC	38:11:17	81:35:53		150	1775	2300	14	WNLH930		NEAR CHARLESTO	
0760051	1	FBSC	T & T COMMUNICATIONS	38:17:46	81:37:32		150	1140	1409	7			CHARLESTON	
0260151	1	FBSC	COMMUNICATION SERVICE INC	38:19:47	81:39:36		148	1100	2300	4	WNLH930		CHARLESTON	
1430030	1	FB	RADIO ENGINEERING & MAINTENA	38:21:05	81:37:56	O	150	620	1400	4	WNLH521		CHARLESTON	
2490089	1	FB	RADIO ENGINEERING & MAINTENA	38:22:32	81:39:26		180	1020	1400	2	WNLH521		CHARLESTON	
3230169	1	FBSC	RAM - PAGE	38:22:32	81:39:26	N	180	1020	1400	2			CHARLESTON	
3520214	1	FB	CAPITOL PAGING	38:22:36	81:42:09		115	940	350				CHARLESTON	
1894051	1	FB	RADIO ENGINEERING & MAINTENA	38:23:11	81:50:28		100	1000	300	8	WNLH511		ST ALBANS	
1430030	1	FB	RADIO ENGINEERING & MAINTENA	38:23:11	81:50:28	O	100	1000	1400	8	WNLH521		SAINT ALBANS	
2490089	1	FB	RADIO ENGINEERING & MAINTENA	38:23:11	81:50:28		100	1000	1400	8	WNLH521		SAINT ALBANS	
3230169	1	FBSC	RAM - PAGE	38:23:11	81:50:28	N	100	1000	1400	8			SAINT ALBANS	
3520214	1	FB	CAPITOL PAGING	38:23:28	82:29:10		65	934	350	42			HUNTINGTON	
3260151	1	FBSC	COMMUNICATION SERVICE INC	38:24:15	81:59:46		200	1000	2200	11	WNLH930		NEAR ST ALBANS	
0760051	1	FBSC	T & T COMMUNICATIONS	38:25:27	82:32:04		170	930	1409	45			BURLINGTON	
1430030	1	FB	RADIO ENGINEERING & MAINTENA	38:25:27	82:32:04	O	270	930	1400	45	WNLH521		BURLINGTON	
2490089	1	FB	RADIO ENGINEERING & MAINTENA	38:25:27	82:32:04		270	930	1400	45	WNLH521		BURLINGTON	
3230169	1	FBSC	RAM - PAGE	38:25:27	82:32:04	N	270	930	1400	45			BURLINGTON	
3260151	1	FBSC	COMMUNICATION SERVICE INC	38:31:22	82:14:06		200	1010	2200	31	WNLH930		NEAR LESAGE	
1660089	1	FBSC	TRANSCOM COMMUNICATIONS	38:37:48	80:51:12		120	1125	1500	49	WNLH923		FRAMETON	
3410158	1	FBSC	RADIO ENGINEERING & MAINTENA	38:48:19	82:13:36	O	200	820	1400	41	WNLH776		GALLIPOLIAS	
3300127	1	FBSC	RAM-PAGE	38:48:19	82:13:36	N	200	820	1400	41			GALLIPOLIAS	

Total # of Records: 24

000015

page:

CD-CHANNEL USER LISTING

Agency - 152.48000

Latitude - 38:23:28

Longitude - 82:29:10

Radius - 50.00 Mi

Requested By - CAPITOL PAGING

Coord - GMDZ

Control Number - 893520

Part 90.173 of the FCC's rules and regulations states that unless specifically provided for in the rules, frequencies are allocated on a SHARED basis only and will NOT be assigned for the exclusive use of any licensee. This listing contains licensees and approved NABER coordinations and is for informational purposes only. It is based on NABER's data base which is based, in part, on information made available from the FCC. These records may contain errors, omissions or inaccuracies. NABER will not be responsible for any loss or damage you sustain which is caused by omissions, errors or inaccuracies in the FCC's data base or in the NABER data base.

INTROL #	UNITS	CLASS	NAME	LATITUDE	LONGITUDE	N	ANT	ELEV	ERP	DIS	CALL SIGN	TRANS CITY
0230169	1	FBSC	RAM - PAGE	37:48:58	82:48:05	N	150	1373	1400	43		PRESTONSBURG
0760051	1	FBSC	T & T COMMUNICATIONS	38:17:46	81:37:32		150	1140	1409	47		CHARLESTON
0260151	1	FBSC	COMMUNICATION SERVICE INC	38:19:47	81:39:36		148	1100	2300	45	WNLH930	CHARLESTON
11430030	1	FB6	RADIO ENGINEERING & MAINTENA	38:21:05	81:37:56	O	150	620	1400	46	WNLH521	CHARLESTON
2490059	1	FB6	RADIO ENGINEERING & MAINTENA	38:22:32	81:39:26		180	1020	1400	45	WNLH521	CHARLESTON
0230169	1	FBSC	RAM - PAGE	38:22:32	81:39:26	N	180	1020	1400	45		CHARLESTON
3520214	1	FB6	CAPITOL PAGING	38:22:36	81:42:09		115	940	380	42		CHARLESTON
1884051	1	FB	RADIO ENGINEERING & MAINTENA	38:23:11	81:50:28		100	1000	300	35	WNLH511	ST ALBANS
11430030	1	FB6	RADIO ENGINEERING & MAINTENA	38:23:11	81:50:28	O	100	1000	1400	35	WNLH521	SAINT ALBANS
2490059	1	FB6	RADIO ENGINEERING & MAINTENA	38:23:11	81:50:28		100	1000	1400	35	WNLH521	SAINT ALBANS
0230169	1	FBSC	RAM - PAGE	38:23:11	81:50:28	N	100	1000	1400	35		SAINT ALBANS
3520214	1	FB6	CAPITOL PAGING	38:23:28	82:29:10		65	994	350			HUNTINGTON
0260151	1	FBSC	COMMUNICATION SERVICE INC	38:24:15	81:59:46		200	1000	2200	32	WNLH930	NEAR ST ALBANS
0760051	1	FBSC	T & T COMMUNICATIONS	38:25:27	82:32:04		170	990	1409	3		BURLINGTON
11430030	1	FB6	RADIO ENGINEERING & MAINTENA	38:25:27	82:32:04	O	270	990	1400	3	WNLH521	BURLINGTON
2490059	1	FB6	RADIO ENGINEERING & MAINTENA	38:25:27	82:32:04		270	990	1400	3	WNLH521	BURLINGTON
0230169	1	FBSC	RAM - PAGE	38:25:27	82:32:04	N	270	990	1400	3		BURLINGTON
4844748	1	FB	SBS CORPORATION	38:26:56	82:40:06		240	882	143	11	KLF421	ASHLAND
0260151	1	FBSC	COMMUNICATION SERVICE INC	38:31:22	82:14:06		200	1010	2200	16	WNLH930	NEAR LESAGE
2410158	1	FBSC	RADIO ENGINEERING & MAINTENA	38:39:05	82:38:28	O	200	1025	1400	32	WNLH776	SOUTH PORTSMOUTH
0300127	1	FBSC	RAM-PAGE	38:39:05	82:38:28	N	200	1025	1400	32		SOUTH PORTSMOUTH
11430030	1	FB6	RADIO ENGINEERING & MAINTENA	38:44:49	82:38:13	O	303	780	1400	36	WNLH521	PORTSMOUTH
2490059	1	FB6	RADIO ENGINEERING & MAINTENA	38:44:49	82:38:13		303	780	1400	36	WNLH521	PORTSMOUTH
0230169	1	FBSC	RAM - PAGE	38:44:49	82:38:13	N	303	780	1400	36		PORTSMOUTH
2410158	1	FBSC	RADIO ENGINEERING & MAINTENA	38:48:19	82:13:36	O	200	820	1400	32	WNLH776	GALLIPOLIAS
0300127	1	FBSC	RAM-PAGE	38:48:19	82:13:36	N	200	820	1400	32		GALLIPOLIAS
2410158	1	FBSC	RADIO ENGINEERING & MAINTENA	38:59:50	82:38:39	O	140	890	1400	43	WNLH776	JACKSON
0300127	1	FBSC	RAM-PAGE	38:59:50	82:38:39	N	140	890	1400	43		JACKSON

Total # of Records: 28

000016



National Association of Broadcasters and Educational Media

EXHIBIT B

1501 Duke Street
Alexandria, VA 22314-3450
703-739-0300
1-800-759-0300



1965-1990

April 5, 1990

Joyce & Jacobs
Rick Joyce
2300 M Street, NW
Eight Floor
Washington, D.C. 20037

Dear Mr. Joyce:

This is in response to your request for materials pertaining to Capitol Radiotelephone from NABER. We believe it is in NABER'S best interest to not supply this information regarding Capitol Radiotelephone, as it is not NABER policy to release this information. If NABER is notified by the Commission in reference to Captiol's application, we will provide the FCC with the information. Since you are planning on protesting Captiol's application with the Commission you may want to contact them directly at 717-337-1212.

Sincerely,

Gloria Watson

Gloria Watson
Frequency Coordinator

000017

Declaration of Bruce Kelleck

I, Bruce Kelleck, being of at least 21 years of age and a citizen of the United States, do hereby declare under penalty of perjury as follows:

In the routine process of presenting a "Cancellation of Service" form to Capital Paging at their Huntington office, Rusty Harrison, Sales Manager, directed my attention to a sizeable stack of stapled information about six pages in total. This information was copies of the RAM traffic study filed with NABER and a copy of the Part 90 FCC rules they presented as the governing rules for a PCP operation. Rusty stated he was using our own graphs and charts to market against us.

He further stated for every customer Capitol lost to RAM, he was using this information to get the customer back. Quote: "We're using your own filings against you".

Both pieces of information when used out of proper context are presented to a customer to intentionally mislead the customer and further malign the RAM operation.

Rusty stated he felt he had to use such "liable" tactics due to his inability to sell multi-products available to customers by RAM sales people.

Executed: _____ By: _____

Notary Public: _____

My Commission Expires: _____

000018

CERTIFICATE OF SERVICE

I, Frederick M. Joyce, do hereby certify that on this 13th day of April, 1990, copies of the foregoing Supplement to Petition to Deny, or Request to Amend Application were mailed, postage prepaid, to the following:

Ralph Haller, Chief
Private Radio Bureau
Federal Communications Comm.
2025 M Street, NW, Room 5002
Washington, D.C. 20554

Jay Kitchen, President
National Association of
Business & Educational Radio
1501 Duke Street, Suite 200
Alexandria, VA 22314

Richard J. Shiben, Chief
Land Mobile & Microwave Division
Private Radio Bureau
Federal Communications Comm.
2025 M Street, N.W., Room 5202
Washington, D.C. 20554

Terry L. Fishel, Chief
Land Mobile Branch
Private Radio Bureau
Federal Communications Comm.
Gettysburg, PA 17326

Mary Beth Hess, Chief
Enforcement Division
Federal Communications Comm.
Common Carrier Bureau
2025 M Street, N.W.
Washington, D.C. 20554

Kenneth E. Hardman, Esq.
2033 M Street, N.W.
Suite 400
Washington, D.C. 20036



Frederick M. Joyce

000019

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JUL 26 1990

Federal Communications Commission
Office of the Secretary

In re:

Application of Capitol Radio-)
telephone Co., Inc. for 152.48)
MHz Private Carrier Paging)
facilities, Huntington/Charleston,)
West Virginia)

File No.: _____

ORIGINAL

To: Chief, Licensing Division
Chief, Land Mobile & Microwave Division,

**SUPPLEMENT TO PETITION TO DENY, OR,
REQUEST TO AMEND APPLICATION**

RAM Technologies, Inc. ("RAM"), through its attorneys, and pursuant to Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, hereby supplements its petition to deny or, in the alternative, to amend onto another frequency the above-referenced application of Capitol Radiotelephone Co., Inc. ("Capitol" or "Applicant").

Revised Traffic Load Studies

RAM's March 29, 1990 Petition explained that due to high traffic levels on the subject frequency, and for other reasons set forth therein, the captioned application should be denied or granted on a different frequency. At that time, traffic load studies showed that the frequency was loaded to more than 91% capacity at the busy hour of operation. (See RAM Petition at 6, and Exhibit Eight, attached thereto.)

000001

Federal Communications Commission

Doc No. 63-231 Exhibit No. exp 5

Presented by Caplan FEB 02 1994

Dr position	{	Identified	
		Received	<u>✓ 2/4/94</u>
		Rejected	

Reporter C. W. Warner

Date FEB 02 1994

In the interim, RAM has continued to activate a significant number of new subscribers on the 152.480 MHz frequency. Attached hereto is a July 18, 1990 traffic study which shows that, at the busy hour between 4:00 to 5:00pm, total channel utilization now exceeds 98% of the available airtime. In light of this high level of usage on the frequency, and because other unused PCP frequencies are in the area, and for the reasons set forth in RAM's Petition, Capitol's application should not be granted on the 152.480 MHz frequency.

Respectfully submitted,

RAM Technologies, Inc.

By: 

Frederick M. Joyce
Its Counsel

JOYCE & JACOBS
2300 M Street, N.W.
Eighth Floor
Washington, D.C. 20037
(202) 457-0100

Date: July 26, 1990

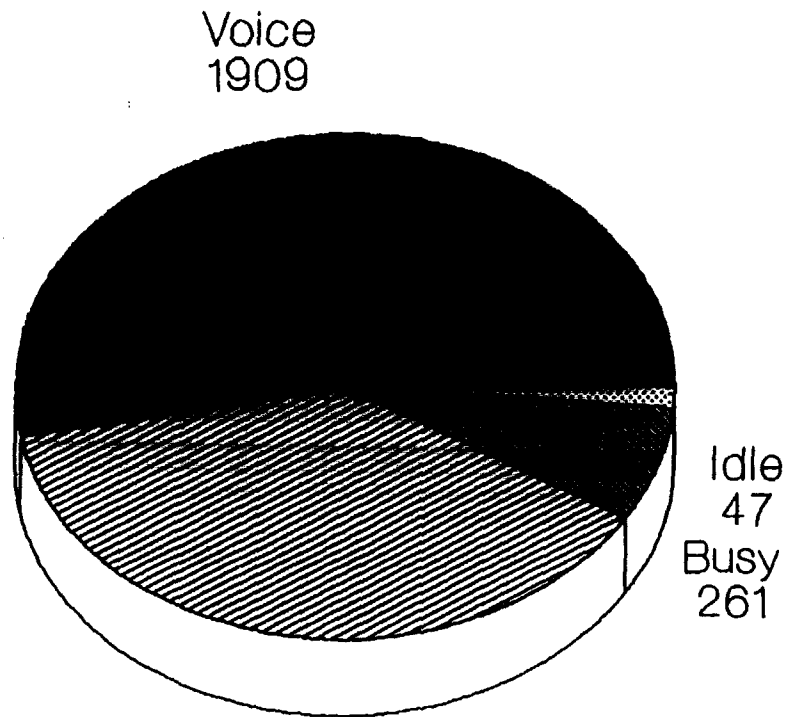
000002

RAM-PAGE Daily Traffic Study
06/18/90

Hour	Voice	Usage Display	Busy	Total Usage	Voice	Utilization Display	Busy	Total Channel Utilization	
8:00	920	965	62	1947	25.56%	26.81%	1.72%	54.08%	
9:00	1821	1344	220	3385	50.58%	37.33%	6.11%	94.03%	
10:00	1497	1162	182	2841	41.58%	32.28%	5.06%	78.92%	
11:00	1253	1237	269	2759	34.81%	34.36%	7.47%	76.64%	
12:00	1165	1355	160	2680	32.36%	37.64%	4.44%	74.44%	
13:00	1012	1409	157	2578	28.11%	39.14%	4.36%	71.61%	
14:00	1255	1466	164	2885	34.86%	40.72%	4.56%	80.14%	
15:00	1408	1398	188	2994	39.11%	38.83%	5.22%	83.17%	
*** 16:00	1909	1383	261	3553	53.03%	38.42%	7.25%	98.69%	***
17:00	1798	1267	233	3298	49.94%	35.19%	6.47%	91.61%	

000003

Channel Usage by Pager Type



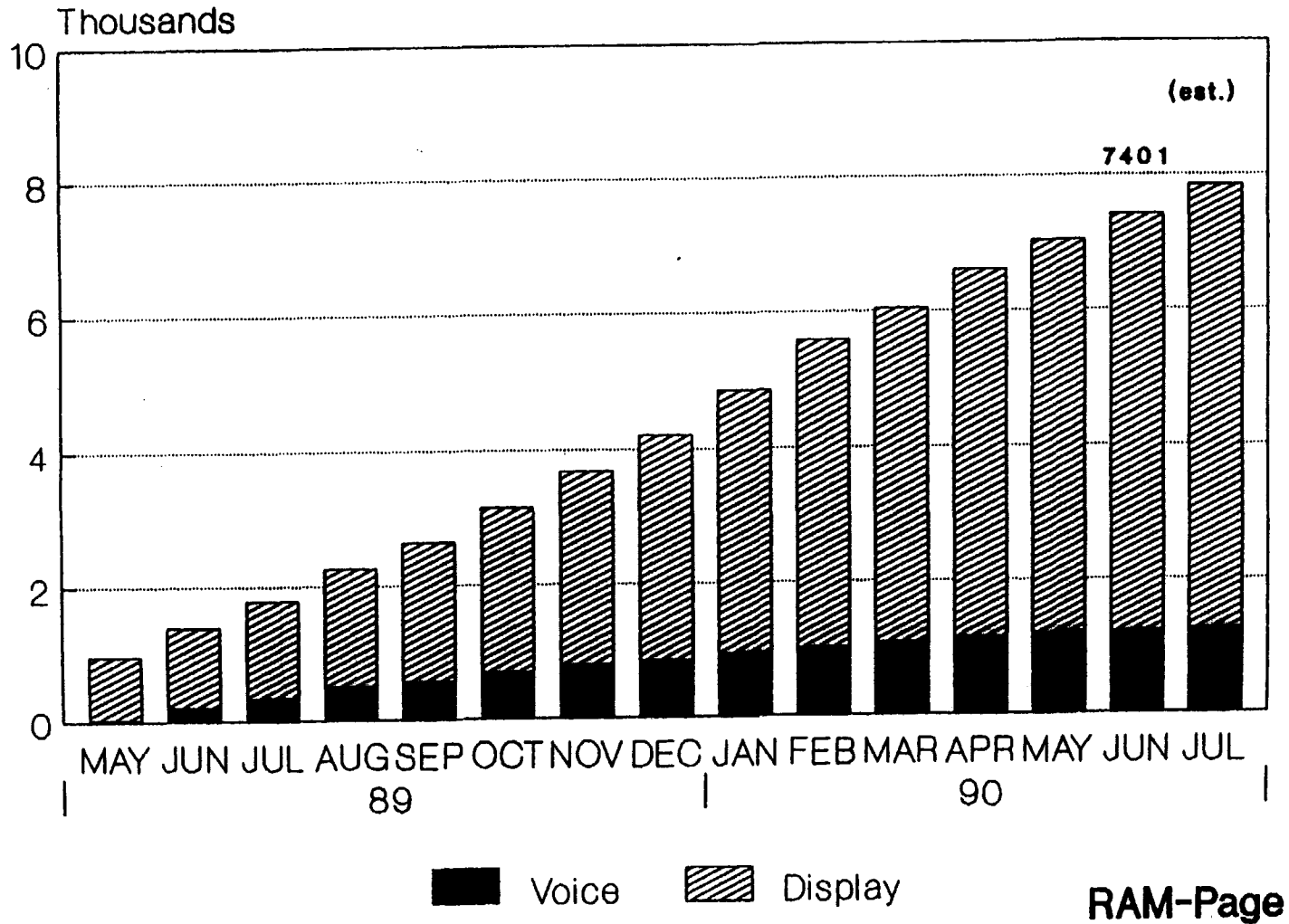
RAM-Page

000004

Busy Hour: 15:00 - 16:00 06-18-90

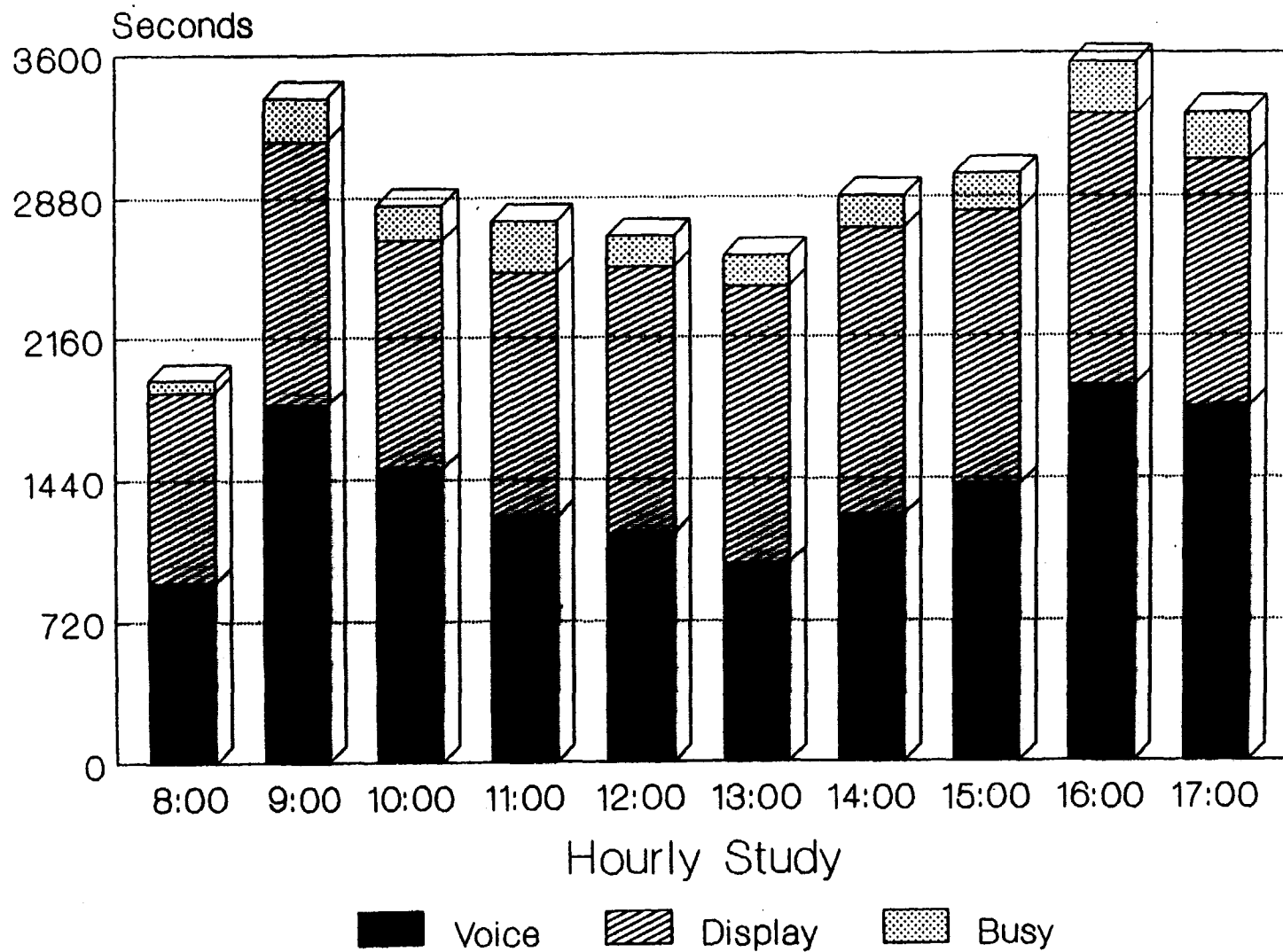
Pagers on System

Shown By Type



000005

Traffic Study



000000

CERTIFICATE OF SERVICE

I, Frederick M. Joyce, do hereby certify that on this 26th day of July, 1990, copies of the foregoing Supplement to Petition to Deny, or Request to Amend Application were mailed, postage prepaid, to the following:

Ralph Haller, Chief
Private Radio Bureau
Federal Communications Comm.
2025 M Street, NW, Room 5002
Washington, D.C. 20554

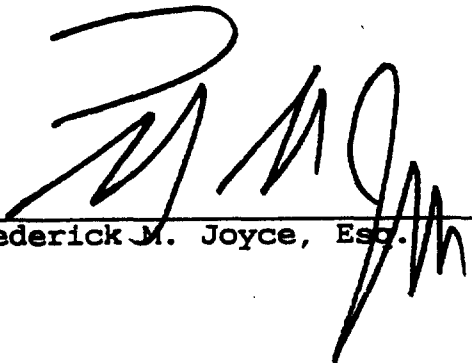
Jay Kitchen, President
National Association of
Business & Educational Radio
1501 Duke Street, Suite 200
Alexandria, VA 22314

Richard J. Shiben, Chief
Land Mobile & Microwave Division
Private Radio Bureau
Federal Communications Comm.
2025 M Street, N.W., Room 5202
Washington, D.C. 20554

Terry L. Fishel, Chief
Land Mobile Branch
Private Radio Bureau
Federal Communications Comm.
Gettysburg, PA 17326

Mary Beth Hess, Chief
Enforcement Division
Federal Communications Comm.
Common Carrier Bureau
2025 M Street, N.W.
Washington, D.C. 20554

Kenneth E. Hardman, Esq.
2033 M Street, N.W.
Suite 400
Washington, D.C. 20036



Frederick M. Joyce, Esq.

000007

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

ORIGINAL

August 9, 1990

IN REPLY REFER TO:

7320-02/LJF90038

Frederick M. Joyce, Esquire
Joyce & Jacobs
2300 M Street, N.W.
Washington, D.C. 20037

Re: Application (File No. 0190207) of Capitol Radiotelephone
Company, Inc. t/a Capitol Paging for a private carrier
paging facility on 152.480 MHz in Huntington/Charleston, WV

Dear Mr. Joyce:

This refers to the March 30, 1990, Petition to Deny and Motion for Stay, as supplemented April 13 and July 26, filed on behalf of RAM Technologies, Inc. (RAM). RAM asks us to deny Capitol's referenced private carrier paging (PCP) application. Capitol opposed RAM's pleadings in an April 11, 1990, letter.

Petitions to Deny are not permitted in the Private Land Mobile Radio Services where frequencies are authorized on a shared rather than a mutually exclusive basis. See 47 U.S.C. § 309; 47 C.F.R. § 1.962; and Hudson Valley Mobile Telephone, Inc., 3 FCC Rcd 6191 (1988). We have nevertheless considered RAM's arguments as informal objections and found them without merit.

RAM has several PCP facilities operating on 152.480 MHz in Kentucky, West Virginia and Ohio. Capitol has several radio common carrier (RCC) paging and mobile radiotelephone facilities in West Virginia. Like Capitol and RAM, the majority of PCP applicants seek 152.480 MHz, the most desirable PCP frequency because of its high permissible power and propagation characteristics. Since PCP frequencies are assigned on a shared rather than an exclusive basis, co-channel users must cooperate to minimize interference but must ultimately accept problems associated with congestion on a popular frequency.

RAM contends that Capitol seeks a PCP license for the sole purpose of causing harmful interference to RAM's PCP operations and submitted several affidavits to support this. That of Sgt. Wendell Adkins, of the Barboursville, WV, Police Department, indicates that Capitol employees told him that RAM-Page had to share their frequencies with other companies and that the Police Department would have trouble with busy signals if it stayed with RAM-Page. Other affidavits describe conversations between Capitol employees and the affiants wherein Capitol represented that it intended to purchase used pagers and then rent them to PCP subscribers for only \$2.00 or \$3.00 per month, thereby "busying" the 152.480 MHz frequency to the detriment of RAM's customers.

RAM's affidavits fail to support its contention that Capitol plans to intentionally interfere with RAM's station. Rather, they reflect that Capitol plans to aggressively market its PCP service by acquiring used pagers and offering discount service, resulting in increased use of the frequency.

000001

~~Product No.~~ 93-231
Exhibit No. Cup 6

Presented by Capitol

Identified	Received	Rejected
✓ 2494		

Beckley

Date 1/21

RAM argues additionally that Capitol made false statements concerning the quality of PCP service in its RCC advertisements that refer to PCP service as "party line" service. Since 152.480 MHz is authorized for shared use among numerous co-channel licensees, Capitol's characterization of PCP frequencies as "party lines", as well as its reported representations that the sharing of 152.480 MHz by several PCP licensees may result in congestion to the detriment of RAM's customers, do not misrepresent the potential consequences of shared spectrum use. Capitol's conduct in this regard, therefore, does not adversely reflect on its qualifications as a Commission licensee.

RAM also maintains that Capitol's service to over 2,000 RCC paging customers shows that it does not need a PCP facility. To the contrary, Capitol's provision of RCC paging service to the public at large should not bar it from the PCP market which serves only Business Radio Service eligibles.

Finally, RAM, citing its own traffic studies, attempts to controvert Capitol's representation to NABER that there is sufficient airtime on 152.480 MHz to accommodate it as an additional shared licensee. This argument is simply without merit. There are no established loading standards for shared spectrum. Where an applicant makes an adequate showing to support its application for a shared frequency, we do not weigh it against air traffic studies from existing licensees, which are inherently subjective. To do otherwise would establish a de facto loading standard that could result in the exclusive assignment of shared channels and encourage unfounded objections by existing licensees that seek to exclude competition. As we indicated above, 152.480 MHz is the most desirable PCP frequency, and there is no reason to question Capitol's request for this frequency.

In view of the above, RAM's objection to Capitol's application (File No. 0190207) is denied and its Petition to Deny and Motion for Stay are dismissed.

Sincerely,



Carol Fox Foelak
Chief, Compliance Branch
Land Mobile and Microwave Division

Copy to: Kenneth E. Hardman, Esquire

000002

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

ORIGINAL

In the matter of:)
)
Application of Capitol Radio-)
telephone Company, Inc., t/a)
Capitol Paging for 152.480 MHz)
Private Carrier Paging) File No. 0190207
facilities, Huntington/Charleston, WV)

To: Chief, Land Mobile & Microwave Division

PETITION FOR RECONSIDERATION

RAM Technologies, Inc., through its attorneys, and pursuant to Section 1.106(a)(1) of the Commission's Rules, 47 C.F.R. § 1.106(a)(1), hereby petitions the Land Mobile & Microwave Division to reconsider the August 9, 1990 decision denying RAM's opposition to the above-referenced application of Capitol Radiotelephone Company (hereinafter, the "Capitol Order"). In support thereof, the following is respectfully shown:

I. Statement of Interest.

RAM is the licensee of private carrier paging ("PCP") facilities, Call Signs WNJN621, et al., operating on the 152.480 MHz frequency at various locations throughout the States of Kentucky, West Virginia, and Ohio. RAM was issued its license by the Private Radio Bureau in approximately May of 1989, and commenced service shortly thereafter. Capitol is the licensee of PLMS Stations KQD614 and KUS223, providing RCC paging and mobile radiotelephone services throughout West Virginia, and the applicant

000001

Federal Communications Commission

Docket No. 93-231 Exhibit No. Cap 07

Presented by Capital

FEB 02 1994

Disposition { Identified _____
Received ✓ 2/4/94
Rejected _____

Reporter A. W. H. S. H.

Date FEB 02 1994